



ARISE Academy Discipline Policy 2010-2011

Safety, order and student discipline are fundamental to learning at ARISE Academy. While students need a challenging curriculum, dedicated teachers and proper materials they must also have a secure environment in which to learn. It is the policy of ARISE Academy that a safe environment conducive to learning shall be maintained at school in order to provide an equal and appropriate educational opportunity for all students. ARISE Academy will apply a "zero tolerance policy" regarding discipline for fighting, classroom distractions, possessing, using, or threatening to use weapons or the unlawful possession, use or distribution of drugs by ARISE Academy students on school properties or at any school sponsored and supervised activity. ARISE Academy shall provide a fair and consistent approach to student discipline, within the context of students' rights and responsibilities.

Defining School Procedures

All students, teachers, and parents will sign the ARISE Academy *Commitment to Excellence Contract* and the ARISE Academy *Non-negotiable Expectations*. By doing so the children, parents and teachers are clear on the expectations of the school before the school year begins. During Orientation, parents and students review and sign the ARISE Academy *Commitment to Excellence Contract*. In addition to the ARISE Academy Commitment to Excellence, staff and parents discuss the *Non-negotiable Expectations*. The students and parents are encouraged to ask questions of the teachers about the high expectations at ARISE Academy and discuss plans for meeting those expectations.

During the first month of school, the classes focus heavily on acclimating students and parents to school procedures, values and discipline. During the school year, school values, procedures and discipline are constantly taught and woven through classes. This consistent exposure ensures that our scholars are receiving the skills they need to be successful on a regular basis.

DISCIPLINE

At ARISE Academy, our culture is rooted in the belief that Discipline is positive, can be taught and is part of our everyday efforts essential to building scholarly habits. These scholarly habits are critical in our pursuit of our mission: passionately raising each scholar's academic, social and physical levels to be successful in high school college and the world beyond. Every ARISE Academy teacher is trained in champion teacher strategies that maximize student achievement and engagement.

CODE OF CONDUCT

As detailed, at ARISE Academy our primary focus of and approach to discipline will be preventative and proactive in nature, the following lays out our very clear policies concerning behaviors that will lead to suspension and expulsion. These behaviors and the Code of Conduct as a whole is congruent with Bulletin 741

as set forth by the Legislature of Louisiana and is mandated that this code of conduct be enforced in all public schools. ARISE Academy takes seriously the safety and well being of our scholars, behaviors that put others in grave physical danger will be grounds for expulsion.

The Following is a more specific list of offenses and the consequences of such offenses.

LEVEL 1

Students who commit the following infractions...

Disrespecting a fellow student
Disrespecting faculty, staff, or other member of the school community
Disrespecting school property
Being out of uniform
Arriving late to school or class
Chewing gum
Disrupting class for any reason at any time
Being unprepared for class
Horseplaying
Running in hallways
Making unreasonable noise
Failing to have school document, homework, or exam signed
Failing to complete homework or other assignment Failing or refusing to follow directions
Stealing
Obstructing vehicular or pedestrian traffic
Lying
Leaving the classroom without permission
Being off-task
Not being where the student is supposed to be in the building or at school event
Mistreatment or inappropriate use of technology or school property
Misbehaving on school-provided transportation, on school grounds, or while walking to / from school or a school event
Possession of inappropriate property or technology Any other behavior deemed by school staff to be inappropriate or disruptive

...may face one or more of the following consequences:

Non-verbal warning
Verbal warning or reprimand
Time out within the classroom
Confiscation of property
Student-teacher conference
Student-administrator conference
Call home to parents
Note home to parents to be signed and brought back to school
Meeting with parents before the student can return to class
Time out outside the classroom
Sent to designated area to complete assignments before re-entry to class
Loss of classroom or other school privileges Exclusion and/or removal from a particular class or event
Extension (ARISE Academy version of Detention)
Suspension of Transportation (as buses are a privledge)
Saturday Detention

Paying for or replacing any damaged or missing property
Verbal or written apology
Parent summoned to attend class with child
Sitting in their seat during breaks
Eating lunch alone and/or lunch detention
Missing school events, trips, or activities
Extended Learning Time (Remaining in school)
Reflecting on their behavior orally and/or in writing
Performing extra service for the school
In-school suspension
Out-of-school suspension
Expulsion from school
Other consequence deemed appropriate by school staff

LEVEL 2

Students who commit the following infractions

Repeated or excessive out-of-school suspensions
Repeated and fundamental disregard of school policies and procedures
Possession, use, or transfer of drugs, alcohol, or controlled substances
Destruction or attempted destruction of school property, including arson
Assault against fellow students, staff, or other members of the school community
Possession of a weapon or mock weapon Student charged with or convicted of a felony Damaging, destroying, or stealing personal or school property or attempting to do so
Committing sexual, racial, or any form of harassment or intimidation
Making bomb threats or violent verbal or physical threats, empty or otherwise
Other egregious breaches of the school's rules or ARISE (Achievement, Respect, Innovation, Service, Enthusiasm) values

...may face one of the following consequences:

Out-of-school suspension
Expulsion
Other consequence deemed appropriate by school staff and board of directors

Expectations for Time on Task

Classroom distractions are not tolerated. We do not allow one or a few students to hold back an entire class. During the school year we will introduce the students to a zero tolerance policy on class disruptions. If students are being disruptive or are off-task, they are subject to the disciplinary actions listed below. The faculty and families should expect to have parent conferences regularly during the school year as children become familiar with ARISE Academy procedures.

Suspensions and Expulsions

All suspensions and alternative instruction must be effectuated substantively and procedurally in accordance with state and local guidelines/laws. The above-mentioned "suspension" and "expulsion" will be considered to mean the following: "Short term suspensions" shall refer to the removal of a student from school for disciplinary reasons for a period of four or fewer days. "Long term suspensions" shall refer to the removal of a student from school for disciplinary reasons for a period of five or more days. "Expulsions" shall refer to the permanent removal of a student from ARISE Academy for disciplinary reasons.

Students who have been suspended from school may not participate in any school functions for the duration of their suspension.

Short-term Suspensions

A student who is determined to have repeatedly broken the ARISE Academy *Commitment to Excellence Contract* or the ARISE Academy *Non-negotiable Expectations* or has committed any of the infractions listed below shall be subject minimally to a short-term suspension, unless the Principal determines that an exception should be made based on the individual circumstances of the incident and the student's disciplinary record. Depending upon the severity of the infraction, the student may be subject to a long-term suspension, expulsion, or referral to the appropriate law enforcement agencies.

Procedures for Short-Term Suspensions:

The Principal or Leadership Team may impose a short-term suspension. Before imposing a short-term suspension, the Principal or The Leadership Team shall verbally inform the student of the suspension, the reason for it, and whether it will be served in school or out of school. The student shall be given an opportunity to deny or explain charges. The Principal or member of the Leadership Team shall immediately notify the parent(s) or guardian(s) in writing or by phone that the student has been suspended from school. Notification shall be provided by telephone if the school has been provided with a contact telephone number for the parent(s) or guardian(s). Such notice shall provide a description of the incident, or incidents, which resulted in the suspension and shall offer the opportunity for an immediate conference with the Principal or the Vice Principal, if one has not already taken place. The notification conference shall be conducted in the dominant language used by the parent(s) or guardian(s).

Students are subject to a short-term suspension if they:

- Vandalize school property causing at least minor damage.
- Leave classroom or building without permission.
- Endanger the physical safety of another by the use of force or threats of force, which reasonably places the victim in fear of imminent bodily injury.
- Use school computers for non-school related use, including viewing or accessing inappropriate websites.
- Engage in conduct which disrupts school, classroom activity or endanger or threaten to endanger the health, safety, welfare, or morals of others, including behavior outside of school or on the bus.
- Engage in insubordination or disrespectful behavior.
- Fail to complete assignments, carry out directions, or comply with disciplinary sanctions.
- Steal, or attempt to steal, or possess property known by the student to be stolen.
- Abuse school property or equipment.
- Use obscene or abusive language or gestures.
- Engage in acts of verbal or physical sexual harassment.
- Pull the fire alarm when there is not an emergency.
- Commit any other act which school officials reasonably conclude disrupts the learning environment of the school.
- Repeatedly commit minor behavioral infractions which, in aggregate, may be considered an infraction subject to formal disciplinary action.

In addition, a student who commits any of the acts previously described as causes for short term-suspension may, instead or in addition, be subject to a long-term suspension at the Principal's discretion.

Long Term Suspensions

A student who is determined to have committed any of the infractions listed below shall be subject *minimally* to a long-term suspension, unless the Principal determines that an exception should be made based on the circumstance of the incident and the student's disciplinary record. Such a student may also be subject to any of the disciplinary measures outlined elsewhere in this document, or subject to referral to law enforcement authorities, and/or to expulsion.

Procedures for Long-Term suspension

The Principal may impose a long-term suspension. In extreme circumstances, the Principal may expel the student from school. Upon determining that student's action warrants a possible long-term suspension, the Principal shall verbally inform the student that he or she is being suspended and is being considered for a long-term suspension (or expulsion) and state the reasons for such actions. The Principal shall immediately notify the student's parent(s) or guardian(s) in writing or by phone. Notification shall be provided by telephone if the school has been provided with a contact telephone number for the parent(s) or guardian(s). Such notice shall provide a description of the incident, or incidents, which resulted in a long-term suspension (or expulsion) and shall offer the opportunity for an immediate conference with the Principal or Vice Principal. The notification conference shall be conducted in the dominant language used by the parent(s) or guardian(s). The Principal shall inform the parent(s) or guardian(s) of their right to be accompanied by an individual of their choice at the conference and can present evidence. In addition, at least one other faculty member should be present to hear the student's defense and may advise the Principal. The Principal shall personally hear and ultimately determine the hearing.

Expulsion

If a child is being considered for expulsion from ARISE Academy Charter School, the Principal shall contact the parent by phone or provide written notice to the student and his or her parent(s) or guardian(s) that the student is being considered for transfer to another school. Such notice also shall set a time and place for a conference with the Principal and shall inform the parent(s) or guardian(s) of their right to be accompanied by an individual of their choice. If, following the conference, the Principal determines that the student's actions warrant an expulsion they will notify the Board of Trustees about the administration's decision. Should they choose, the parent or guardian may appeal the administration's decision to the Board of Trustees and an expulsion hearing will be scheduled for the parent/guardian in a timely manner. The parents, should they so choose, may also present materials to the Board. If at the conclusion of the hearing the Board determines the expulsion is warranted the child will then be expelled. If the Board of Trustees feels that the expulsion should be overturned the child will be permitted to remain at school.

Students are subject to a long-term suspension or expulsion if they:

- Make a false bomb threat or pull a false emergency alarm.
- Repeatedly engages in conduct which disrupts school or classroom activity or endanger or threaten to endanger the health, safety, welfare, or morals of others
- Fight another student
- Assault a staff member
- Possess, use, attempt to use, or transfer any firearm, knife, razor blade, explosive, mace, tear gas, or other dangerous object of no reasonable use to the student in school.*
- Commit, or attempt to commit arson on school property.
- Vandalize school property causing major damage.
- Repeatedly commit minor behavioral infractions which, in aggregate, may be considered an infraction subject to formal disciplinary action.
- Commit any act which school officials reasonably conclude warrants a long term suspension.
- Continuously make false allegations against school officials

* The Federal Gun-Free Schools Act of 1994, which applies to public schools, states that a student who is determined to have brought a weapon to school must be suspended for at least one calendar year. This suspension requirement may be modified by school administrators, however, on a case-by-case basis. Weapon as used in this law means “firearm,” as defined by 18 USC §3214(3)(d) effectuates this federal law.

Repeat Offenders

Students who continue to be suspended whether in-school or short or long term may be expelled from ARISE Academy. Students who have been suspended 3 or more times in their entire duration at ARISE Academy will be expelled or will be asked to transfer to another school.

Alternate Instruction

Students who are suspended will be provided with alternative instruction. Arrangements will be made between the school and each individual family for the delivery of services, pick-up/delivery of work, and the making up of any missed assignments and classroom. All IDEA mandates will be followed for students with disabilities.

Due Process Procedures

Students with disabilities have the same rights and responsibilities as other students, and may be disciplined for the same behavioral offenses listed above. If a student with disabilities has an IEP that includes disciplinary guidelines, then that student will be disciplined according to those guidelines, as required by IDEA. Students for whom the IEP does not include specific disciplinary guidelines may be disciplined in accordance with the standard school policy listed above.

The family may make a final appeal to the ARISE Academy Board of Directors. The family may bring counsel with them if they so desire. In all events of expulsion, the Principal of ARISE Academy will work in conjunction with the family to find the best possible alternative educational setting.

Policies & Procedures for Students with Disabilities

I. Overview of Procedural Safeguards

- A. General.** Disciplinary actions give students with disabilities extra legal protections when the discipline constitutes a change in placement. If a student violates the Student Code of Conduct, before consequences or punishment are imposed, the principal/designee must consider whether the student:

- Has an IDEA or Section 504 disability; or
- Is a student who is “thought to have a disability.”

While all students may be disciplined, the placement of students with disabilities cannot be “changed” when the offense is directly related to his/her disability or when the IEP or Section 504 plan is not implemented, *except in the case of emergency circumstances (drugs, weapons, significant bodily injury)*. See Section II for more information about emergency circumstances.

- B. Determining Change in Placement.** A change in placement is a legal term that applies to the situations described below. A student’s school suspension that occurred in a LA local education agency (LEA) during the same school year of transfer into another LA LEA “counts” and is added to any additional suspensions in the new school.

1. More than 10 Consecutive Days of Suspension, i.e., Expulsion

Any suspension that is for more than 10 consecutive days is considered to be a change in placement.

2A. More than 10 Total Days of Suspension in One School Year. Option 1

A series of suspensions with days that total more than 10 total school days in a school year is a change in placement.¹ The special education chairperson, with assistance and documentation from the Administration/Disciplinarian, monitors the number of days each student has been suspended. Students with disabilities who have not reached this 10-day threshold may be suspended under the procedures that apply to all students.

2B. More than 10 Total Days of Suspension in One School Year. Option 2

A series of suspensions with days that total more than 10 total school days in a school year may be a change in placement.² The special education chairperson, with assistance and documentation from the Administration/Disciplinarian, monitors the number of days each student has been suspended. Students with disabilities who have not reached this 10-day threshold may be suspended under the procedures that apply to all students.

Factors for Determining Pattern of Suspensions

Substantially Similar Behavior. Is the student's behavior substantially similar to the behavior for which the student has previously been suspended? (Factors may include same type of behavior, same victim, same class, same day of the week or same time of day, etc.) If the answer is **yes**, continue with the following analysis:

Other Pattern Considerations. Consider such factors as:

- Length of each suspension, e.g., 1 day, 4 days, etc.
- Total cumulative days of suspensions, e.g., 11 days, 20 days, etc.
- Proximity of (time between) suspensions, e.g., 1 week apart, 2 months apart, etc.

A pattern is more likely to exist when the facts in each factor are more extreme, e.g., longer suspension lengths, more cumulative days of suspension and fewer days between each suspension. Also, consider whether the suspensions are: from the same class on a regular basis; on the same day of the week; at the same time of day; for the same activity; involving same staff or other students.

Consistent Decision-Making. Determining whether a pattern exists is very subjective. Thus, school staff should consult with a Department of Education Representative (Office of Federal Programs Support) when considering this issue to ensure that factors are considered consistently across schools.

The ***Determining a Pattern of Suspensions Worksheet***, Appendix A, should be used to document consideration of this issue whenever a student's suspension has surpassed 10 cumulative days for the year.

3. Additional Considerations. The following considerations apply to in-school suspension; a suspension or removal for a portion of the school day; and for suspensions from transportation.

- a. In-school Suspension.** An in-school suspension will not be considered as a suspension for the above purposes as long as a student is given the opportunity to continue to: appropriately

¹ In-school suspension and suspension from the bus may constitute a suspension to the extent they impact implementation of a student's IEP. See additional information on the next page.

² In-school suspension and suspension from the bus may constitute a suspension to the extent they impact implementation of a student's IEP. See additional information on the next page.

participate in the general curriculum; receive IEP specified services; and participate with nondisabled children to the extent (s)he would have in the current placement. Any in-school suspension that does not meet this standard must be considered as a suspension for purposes of these procedures.

- b. Suspension/Removal for Portion of School Day.** Students sent home from school in the morning because of misconduct is considered to have a full-day suspension. Students sent home in the afternoon is considered to have a half-day suspension. These conditions apply unless the student's BIP specifically calls for the student to receive a shortened school day when certain behaviors are exhibited.³
- c. Bus Suspension.** The following standards apply based on whether transportation is a related service on the IEP:
 - 1) Bus Transportation Is IEP Service.** When transportation is an IEP service, a student's removal from the bus is considered to be a suspension **unless** transportation is provided in some other way. In this case, transportation has been determined to be necessary for the student to access educational services.
 - 2) Bus Transportation Is Not IEP Service.** When transportation is not an IEP service, the student's removal from the bus is NOT considered to be a suspension. In this case the student/parent have the same obligations for the student to get to and from school as any nondisabled peers suspended from the bus. However, school officials should consider whether the bus behavior is similar to classroom behavior that IS addressed in an IEP and whether the bus behavior should be addressed in the IEP or through a BIP.

Monitoring Suspensions - Principals must have procedures in place to monitor and cumulatively total all suspensions for students with disabilities.

C. Determining Manifestation Determination & Services.

- 1. Manifestation Determination.** Within 10 days of any decision resulting in a change of placement the LEA representative, parent, and relevant members of the child's IEP Team (as determined by the parent and the LEA representative) must meet and determine whether the student's behavior is a manifestation of his/her disability using the Manifestation Determination form. The procedures below are used to make this determination.

a. Making the Decision

- 1) Review Relevant Information.** The team participants review all relevant information in the student's file, including the IEP. If the IEP was not implemented, the team documents why it was not implemented and whether the failure to implement the IEP impacted the student's behavior.

³ Note: The Student Information System allows only the entry of suspension for a full day; half days are not permitted. Thus, there may be a difference between a student's actual total number of suspension days and the total recorded on the System. The student's "actual" full time equivalent days of suspension, however, are relevant to the application of these standards. Schools are strongly encouraged to enter suspension data in "real time."

- 2) **Observe Behavior.** The team also reviews documentation of staff observations regarding the student's behavior. This should include an analysis of the student's behavior across settings and times throughout the school day.
 - 3) **Information from Parents.** The team reviews any relevant information provided by the parents.
 - 4) **Ask Two Questions to Determine Manifestation.** The team must consider the two questions below to determine if a student's behavior was manifested by his/her disability.
 - a) **Relationship of Behavior to Misconduct.** Was the conduct caused by or directly and substantially related to the student's disability?

Consider whether the behavior in question has been consistent and/or has an attenuated association with the disability:

 - **Consistent Behavior.** Behavior that has been consistent across settings and across time may meet this standard.
 - **Attenuated Association.** Behavior that is not an attenuated association, such as low self-esteem, to the disability would not have a direct and substantial relationship to the student's disability.
 - b) **IEP Implementation.** Was the conduct a direct result of the school's failure to follow the student's IEP? If so, the principal must ensure that immediate steps are taken so that the identified deficiencies are remedied.
- d. **Behavior Is Manifestation of Disability.** If the relevant members of the IEP team answers yes to either question, then the student's behavior is a manifestation of his/her disability. In this case:
- 1) **Return to Placement.** Unless the IEP team agrees to a change of placement as part of the modification of the BIP, the school must return the student to the placement from which (s)he was removed. Note: this provision does not apply to students involved with weapons, drugs or serious bodily injury. (See Section II.)
 - 2) **FBA & BIP.** The IEP team must conduct or review a functional behavioral assessment (FBA) and create a behavior intervention plan (BIP) addressing ways that the school can help the student with the conduct at issue. If the student already has a BIP, it must be reviewed and modified to address how the school can better assist the student with the conduct at issue. **Note:** If the FBA requires a new assessment of student behavior, parental consent is required.
- e. **Behavior is NOT Manifestation of Disability**
- 1) **Same Consequences.** If the IEP team members agree that the student's conduct was not a manifestation of his/her disability, then the student may be subject to the same consequences as all students.⁴
 - 2) **Required Services.** A student with a disability who is removed from his/her current placement must receive the following services beginning on the 11th day of *cumulative* suspensions during the school year. The IEP team:

⁴ If a parent disagrees with the team's decision that the behavior was not a manifestation of the student's disability or with the interim alternative educational services or location, the parent may request an expedited due process hearing to challenge this finding. If the Hearing Officer agrees with the parent, the student will remain in the school where the offense was committed unless the parent and the school agree otherwise.

- a) **Identifies Services.** Identifies and documents educational services the students will receive to enable the student to continue to participate in the general education curriculum, although in another setting (e.g., an interim alternative educational setting (IAES), etc.) and to progress toward meeting the goals set out in the student's IEP; and
- b) **Develops/Reviews FBA/BIP.** Provides, as appropriate, an FBA and BIP services and modifications, which are designed to address the behavior violation so that it does not recur.
- c) **Considers Need for More Restrictive Services.** May convene and modify the student's IEP. School personnel may consider any unique circumstances on a case-by-case basis when determining whether a change in placement, consistent with the requirements of this section, is appropriate for a student with a disability who violates a code of student conduct.

II. Weapons, Drugs or Serious Bodily Injury: Emergency Procedures

In circumstances related to a student's use of weapons, drugs or imposition of serious bodily injury, school officials may remove a student for 45 school days by following the procedures below.

A. Criteria for Emergency Removal.

1. **Weapons.** A student carries a weapon to or possesses a weapon at school, on school premises, or to or at a school function under the school's jurisdiction.

A weapon is a device, instrument, material or substance animate or inanimate that is used for or is readily capable of causing death or serious bodily injury (excluding pocket knife with a blade of less than 2 ½ inches in length); firearms, including a starter gun; the frame or receiver of such a weapon; a muffler or silencer; any destructive device including any explosive incendiary or poison gas bombs, grenades, rockets, missiles and mines; does not include antique firearms.

2. **Drugs.** A student knowingly possesses or uses illegal drugs, or sells or solicits the sale of a controlled substance, while at school, on school premises, or at a school function under the school's jurisdiction;

A controlled substance is a drug or other substance in the Federal Code that does not include a substance legally used and possessed under the supervision of a licensed health-care professional.

- ✓ Possession of alcohol and tobacco does not fall under "controlled substance." Therefore, the principal cannot move a student to an IAES for possession of these items under this section. Instead, the removal is subject to the procedural safeguards applicable to other types of misconduct.

3. **Serious Bodily Injury.** A student inflicted serious bodily injury upon another person while at school, on school premises, or at a school function under the jurisdiction of the State or an LEA.⁵

Serious bodily injury involves substantial risk of death; extreme physical pain; protracted and obvious disfigurement; or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

B. Removal

⁵ To comply with the law, a 45 school day emergency removal for serious bodily injury must be extremely serious, i.e., requiring medical treatment.

1. **General.** The school may immediately remove the student for up to 45 school days to an IAES. Because drugs, weapons and serious bodily injury are so dangerous to a safe school climate, a school may remove a student under these circumstances for 45 school days regardless of whether the team believes that the behavior is a manifestation of the student's disability.

The 45 school days do not include those days the school is not in session, e.g., Spring Break. The IEP team may specify a removal for fewer days than the maximum 45 days.

- C. **Action during Removal.** During the 45 school day period, the school must convene a meeting to determine whether the student's behavior is a manifestation of his/her disability. (See Section I.C. above for more information about the manifestation determination process.)

1. **Behavior IS Manifestation of Disability**

- a. **FBA/BIP.** As discussed above, the IEP team must conduct or review an FBA and create a BIP addressing ways that the school can help the student with the conduct at issue. If the student already has a BIP, it must be reviewed and modified to address how the school can better assist the student with the conduct at issue. Note: if the FBA requires a new assessment of student behavior, parental consent is required.
- b. **Reevaluation.** The student may be referred for a reevaluation.
- c. **More Intensive Services.** The IEP team may meet to consider more intensive special education services upon the expiration of the 45 day IAES or sooner.

2. **Behavior is NOT Manifestation of Disability**

- a. **Disciplinary Hearing.** If all team members determine that the conduct was not a manifestation of the student's disability, then the 45 school day emergency placement may proceed to a disciplinary proceeding afforded to all students.
- b. **FBA/BIP.** The student must receive, as appropriate, an FBA and BIP services and modifications, which are designed to address the behavior related to the disciplinary violation so that it does not recur.

III. Appeals

- A. **Reasons for Requesting an Expedited Due process Hearing**

1. **Parent Disagreement.** Parents who disagree with the appropriateness of the alternative placement or remedial disciplinary setting or services may request an expedited due process hearing.
2. **School Considers Student to be Dangerous.** If a school has documented reasons to believe that keeping the student in his/her current school is **substantially likely to result in injury to the student or to others**, the school should request an emergency hearing for the purpose of transferring the student to an IAES for up to 45 school days. *Note: this standard is not as high as serious bodily injury; it does **not** allow for an immediate 45 school day removal.*

- B. **Authority of Hearing Officer**

1. A hearing officer may:
 - a. Return the student to the placement from which the student was removed if the hearing officer determines that the removal did not comply with these procedures or that the student's behavior was a manifestation of the student's disability; or
 - b. Order a change of placement to an IAES for not more than 45 school days if maintaining the current placement of the student is substantially likely to result in injury to the student or to others.

2. The school may repeat its request for an expedited hearing if it believes that returning the student to the original placement is substantially likely to result in injury to the student or to others.

C. Expedited Due Process Hearing Procedures.

1. An expedited hearing must occur within 20 school days of the date the request is filed. The hearing officer must make a determination within 10 school days after the hearing.
2. Unless the parents and school personnel agree in writing to waive the resolution meeting or agree to mediate the dispute:
 - a. A resolution meeting must occur within seven days of receiving notice of the hearing request; and
 - b. The hearing may proceed unless the matter has been resolved to the satisfaction of both parties within 15 days of receipt of the hearing request.
3. Evidence not disclosed to the other party three business days before the hearing is excluded, unless the parties agree otherwise.

Expedited due process hearing decisions are appealable to state or federal court.

D. Placement during Appeal of Discipline Decision

1. **Weapons, Drugs or Serious Bodily Injury.** The student remains in the IAES pending the decision of the hearing officer or until the expiration of the 45-day or code violation time period (if less than 45 school days), whichever occurs first, unless the parent and school personnel agree otherwise.
2. **Behavior Not Manifested by the Student's Disability.** The student remains in the IAES pending the decision of the hearing officer or until the expiration of the 45-day or code violation time period (if less than 45 school days), whichever occurs first, unless the parent and school personnel agree otherwise.
3. **Behavior Is Manifested by Student's Disability but Belief Behavior is Substantially Likely to Cause Injury.** The student remains in the placement (s)he was in at the time of the behavior in question unless the parent and school personnel agree otherwise.

IV. Students Without IEPs or Section 504 Plans "Deemed to Have a Disability"

In some cases, a student without a disability will be deemed to have a disability. The criteria for making this determination and the applicable procedures relevant to such a finding are discussed below.

A. Knowledge of suspected disability (Thought to be a student with a disability)

There are certain circumstances that would indicate a school had knowledge that a student might (or is thought to) have a disability prior to the violation of the disciplinary violation. The following three situations give rise to such legal evidence:

1. **Evaluation Requested.** The parent requested an evaluation.
2. **Written Concern.** The parent expressed concern in writing to the student's teacher or school administration about the student's need for special education and related services
3. **Specific Concerns by Staff about Pattern of Behavior.** The student's teacher or other school staff told school supervisory personnel of specific concerns about the student's pattern of behavior.

If any of the three factors above are present, then school officials consider disciplinary action as if the student has a disability.

B. NOT Deemed To Have Knowledge. This provision does not apply if:

1. Parent did not consent to an initial evaluation of the student
2. Parent refused special education and related services for the student **or**
3. The student was evaluated and was determined not to have disability.

If any of these three circumstances exist, the student may be subjected to the same disciplinary measures applied to those without disabilities engaging in similar behaviors.

The US Department of Education's comments to the IDEA states: a public agency will **not** be considered to have a basis of knowledge merely because a child receives services under the coordinated, early intervening services of the IDEA law UNLESS a parent or teacher of a child receiving early intervening services expresses a concern, in writing, to appropriate agency personnel that the child may need special education and related services.

C. School Personnel Have No Knowledge and Parent Subsequently Requests an Evaluation

If the parent requests an evaluation for a suspected disability after the student is sent to an IAES, the school must conduct an expedited evaluation at parental request. However, the student remains in placement, including an IAES, during the evaluation. If the student is found to have a disability, an IEP must be developed. The IEP team must then conduct a **manifestation determination**. If the behavior is manifested by the student's disability, the team reconsiders the student's placement in light of the new information

V. Referral to and Action by Law Enforcement and Judicial Authorities

- A. Reporting Crimes.** Nothing in this part prohibits school personnel from reporting a crime committed by a student with a disability to appropriate authorities or prevents State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a student with a disability.
- B. Transmittal of Records.** School personnel reporting a crime committed by a student with a disability must ensure that copies of the special education and disciplinary records of the student are transmitted for consideration by the appropriate authorities to whom the agency reports the crime. Records must be transmitted only to the extent that the transmission is permitted by the Family Educational Rights and Privacy Act.

VI. Application of Section 504 and ADA

Generally, students with disabilities eligible for services only under Section 504/ADA (i.e., need related and supplementary aids and services only) are entitled to the procedural safeguards specified in this section. An exception to this general rule applies to students with behavior that is not a manifestation of his/her disabilities. In this case, these students are entitled to those services normally available to nondisabled students who are suspended or removed pursuant to the school's *Code of Student Conduct*.